IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/10/2003

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.A.No.408 of 1996 and W.A.No. 553 of 1996

M/s.Caterpillar India Pvt.Ltd.,
P.O. Melanallathur,
Thiruvellore 602 004.

(The name of the appellant, namely, The Management of Hindustan Motors Ltd., P.O. Melanallathur, Trivellore 602 004 Chengleput District, has been ordered to be amended in both the appeals as M/s.Caterpillar India Pvt.Ltd., P.O. Melanallathur, Thiruvellore 602 00 order in C.M.P. No.15872 of 2001 in W.A.No.408 of 1996 dated 8.9.2003 and C.M.P.No.15290 of 2001 in W.A.No.553 of 1996 dated 25.7.2002)

... Appellant in both appeals

-Vs-

1. The Presiding Officer,
II Addl. Labour Court,
Madras. ... 1st respondent in both appeals.

2. G.Balasubramanian
... 2nd respondent in
W.A.408 of 1996

2. K.S.Raghuraman
... 2nd respondent in
W.A.553 of 1996

Writ Appeals filed against the orders dated 15.2.1996 made in W.P.Nos.3817 of 1986 and 3812 of 1986 respectively on the file of this Court.

In both appeals

!For appellant : Mr.Manohar Gupta for
M/s.Gupta and Ravi

^For respondents: Mr.D.Hari Paranthaman.. for R2.

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

W.A.No.408 of 1996 is preferred against the judgment of the learned Judge of this Court rendered in W.P.No.3817 of 1986 dated 15.2.1996. W.A.No.556 of 1996 is directed against the judgment rendered in W. P.No.3812 of 1986 dated 15.2.1996. The points that arise in both the appeals are common.

2. In our view, it will be sufficient to notice the facts in W.A. No.408 of 1996 as facts and points that arise in both the appeals are common. The parties are also common except the second respondent in each of the appeals. The facts leading to the filing of the writ petition, W.P.No.3817 of 1986 by the predecessor-in-interest of the appellant company, namely, The Management of M/s.Hindustan Motors Ltd. (hereinafter referred to as the appellant company), are as under:- The writ petition has been filed against the award passed by the Second Additional Labour Court, Chennai in I.D. No.501 of 1983 holding that the non-employment of the second respondent was not justified and directing reinstatement of the second respondent with backwages and other attendant benefits on the ground that the domestic enquiry conducted against the second respondent was not fair and proper. The second respondent was working as an Electrician in the appellant company at Tiruvellore wherein the appellant is manufacturing Heavy Earthmoving Equipment. The second respondent was transferred to Ramgargh in the State of Bihar along with three others. The case of the appellant is that they were sent to Ramgargh after explaining to them the purpose for which they were sent as well as the amounts they would be paid at Ramgargh. The second respondent along with others left Chennai on 20.11.1981 and the purpose for which the second respondent was sent to Ramgarh was for assembly and commissioning of 33-11G Units. The case of the appellant is that even though the second respondent and others reached Ramgargh on 22.11.1981, they did not do any work. According to the appellant, it is the responsibility of the officer-incharge of the project to take care of the welfare of the second respondent and others and the second respondent was paid the usual batta with which the second respondent could comfortably live and the amount was paid as per the company rules. It is stated that the second respondent and others were provided with free accommodation as a special case. The case of the appellant is that without any reason whatsoever the second respondent left the place of work at Ramgargh on 28.11 .1981 and between 23.11.1981 and 28.11.1981 the second respondent and others did not do any work. According to the appellant, the attitude of the second respondent in refusing to do any work without any justifiable reason after having gone to Ramgargh would amount to gross misconduct which affected the work for which the second respondent was sent by the appellant company. It is stated that the second respondent left Ramgargh on 28.11.1981 and reported for duty at Tiruvellore on 3.12.1981.

3. The appellant company issued a charge-sheet dated 3.12.1981 to the second respondent for which he gave an explanation dated

5.12.1981 . The appellant company was not satisfied with the explanation offered by the second respondent and an enquiry officer was appointed and enquiry took place between 19.12.1981 and 25.3.1982. According to the appellant, the second respondent participated in the enquiry and the principles of natural justice were complied with and the enquiry was conducted in a fair manner. It is stated in the affidavit filed in support of the writ petition, W.P.No.3817 of 1986 that the enquiry commenced on 19.12.1981 and adjourned to 21.12.1981 as the management's representative was ill and on 21.12.1981 the enquiry was taken up and after recording of evidence it was adjourned to 30.12.1981 on which date also the enquiry progressed and then, the enquiry was adjourned to 11.1.1982 and on 11.1.1982, as the management witness, by name, R.Vijayaraghavan was held up with urgent matters at Ramgargh, the enquiry was adjourned to 5.3.1982. It is also stated that on 5.3.1982 , the enquiry was taken up and after recording of evidence it was adjourned to 9.3.1982 on which date also the enquiry progressed and on 9 .3.1982 the enquiry was adjourned to 15.3.1982 and then to 20.3.1982 at the request of the second respondent to examine his witnesses. On 20.3.1982 the second respondent sought for time and the enquiry was adjourned to 25.3.1982. According to the appellant, the adjournments were given to enable the second respondent to produce his witnesses. It is stated that on 25.3.1982 the second respondent did not bring his additional witnesses and the enquiry officer refused to adjourn the matter any further. The second respondent gave a statement of his defence. It is also stated that the second respondent has made a statement to the effect that he was satisfied with the enquiry. The enquiry officer submitted his report on 31.3.1982 and he recorded a finding in his report that the charges levelled against the second respondent have been proved. The appellant company by order dated 24.4.1982 accepted the report of the enquiry officer and taking into account the past record of the second respondent passed an order dismissing the second respondent from service. The second respondent filed a petition under section 2-A of the Industrial Disputes Act, 1947 before the Labour Officer and since the conciliation failed, the Government made a reference to the Labour Court on the following question:
"Whether the non-employment (of the second respondent) is not justified and whether he is entitled to an order of reinstatement with attendant benefits"

4. The Second Additional Labour Court, Chennai passed an award dated 17.2.1986. The Labour Court found that the case of the second respondent was that he got permission from Vijayaraghavan before leaving for Chennai, and for proper appreciation of rival contentions of the parties, the evidence of Vijayaraghavan on the side of management and the evidence of other employees who had accompanied the second respondent to Ramgargh on the side of the workman would be vital. The Labour Court found that the enquiry officer has given adjournments to the management from 30.12.1981 to 5.3.1982 and the enquiry officer was liberal in granting adjournments to the management and allowing the management to recall its key witness after the examination of the witness for the delinquent employee and when the enquiry was adjourned to 20.3.1982 enabling the second respondent to examine other two witnesses whom he wanted to examine, the second respondent made a representation to the enquiry officer that his witnesses were at Ramgarh and hence, he could not get them and he also informed them of the enquiry, and requested for adjournment

of the enquiry. The Labour Court also found that while the enquiry officer adjourned the enquiry for nearly two months to enable the management to examine Vijayaraghavan, he gave only five days' time to enable the second respondent to get his witnesses from Ramgargh and adjourned the matter to 25.3.1982 and on 25.3.1982 the second respondent presented an application stating that his witnesses had gone to Ramgargh in connection with company's work and they could not attend the enquiry immediately, and therefore the second respondent wanted the enquiry to be adjourned, but the enquiry officer refused to adjourn the enquiry and asked the second respondent to give his statement. The Labour Court found that the conduct of the enquiry officer showing disparity in granting adjournments would justify the contention of the second respondent that the enquiry had not been conducted fairly and properly. The Labour Court found that the witnesses whom the second respondent wanted to examine are the persons who accompanied him to Ramgargh and the case of the second respondent was that he along with another employee returned to Tiruvellore only in pursuance of the decision taken by all of them to have consultation with the management through the Union regarding their demands and he got permission from Vijayaraghavan before leaving Ramgargh and he had been attending to his duties till he left Ramgargh and therefore, the Labour Court was of the view that unless the other two employees are examined on the side of workman, it may not be possible to arrive at a just conclusion as to which of the two statements is correct. The Labour Court therefore found that the failure of the enquiry officer to grant opportunity to the second respondent to examine his two witnesses soon after they returned from Ramgargh, particularly when the enquiry officer gave two months' time to the management to examine its witness would certainly be prejudicial to the interest of the second respondent. In this view of the matter, the Labour Court found that the enquiry against the second respondent was not conducted fairly and properly. The Labour Court also found that the management did not ask for an opportunity being given to it to prove the case against the second respondent in case the Court holds that the enquiry has not been conducted fairly and properly and held that the order of dismissal was not justified as the enquiry was not conducted properly and passed an award holding that the nonemployment was not justified and directing reinstatement of the second respondent with backwages.

5. The award passed in the case of second respondent was challenged in the writ petition and the learned Judge of this Court dismissed the writ petition and against the judgment of the learned Judge, the present appeal has been preferred. The same is the position with reference to the second respondent in the other writ appeal.

6. Learned counsel for the appellant submitted that it is open to the appellant to question the decision of the Labour Court rendered on a preliminary issue whether the enquiry was conducted in a fair and just manner. He relied upon the decision of the Supreme Court in COOPER ENGINEERING LTD. v. P.P.MUNDHE (1975 II LLJ 379). There can be no doubt about the proposition of law canvassed by the learned counsel for the appellant and we make it clear that it is open to the appellant to question the award of the Labour Court on the question of preliminary issue decided by it. Learned counsel for the appellant submitted that the appellant has made

an oral request before the Labour Court to give an opportunity to prove its case against the second respondent. However, we find that the Labour Court has expressly recorded a finding that the appellant company has not asked for any opportunity to prove the case against the second respondent and the observation of the Labour Court as to what happened in the Court has to be accepted. We uphold the finding of the Labour Court that there was no oral request made by the appellant seeking opportunity to lead evidence to prove the case against the second respondent.

7. Be that as it may, the Supreme Court in KARNATAKA STATE ROAD TRANSPORT CORPN. v. LAKSHMIDEVAMMA (2001) 5 SCC 433) held that the right of the management to lead evidence before the Labour Court or Industrial Tribunal in justification of its decision under consideration by the Labour Court or Industrial Tribunal is not a statutory right and it is actually a procedure laid down by the Supreme Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman. The Supreme Court also held that in order to avoid unnecessary delay and multiplicity of proceedings the management has to seek leave of the Court/Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. Admittedly, the appellant company did not seek permission of the Labour Court to lead evidence in the written statement filed before the Labour Court, but the case of the appellant company is that it made an oral request before the Court. We are of the view, the decision of the Supreme Court in Lakshmidevamma's case (2001) 5 SCC 433) would squarely apply to the facts of the case and having failed to make such a request in the written statement filed by it, it is futile on the part of the appellant to contend that an oral request was made and on the basis of the oral statement, the Labour Court should have granted the opportunity to the management to lead further evidence and cover up the shortcoming in the enquiry.

8. The next submission of the learned counsel for the appellant is that the Labour Court was not correct in its view that the enquiry was vitiated on the ground that no opportunity was given to the workman. Learned counsel for the appellant referred to the enquiry proceedings and also the letter dated 25.3.1982 (Ex.M.10) of the second respondent and submitted that the second respondent requested that the enquiry should be adjourned indefinitely till the other employees/ witnesses came back to Chennai from Ramgargh. He submitted that it is an unreasonable request made by the second respondent to adjourn the enquiry indefinitely and therefore the enquiry officer was quite justified in rejecting the request of the second respondent for adjourning the enquiry. The second respondent, by letter dated 25.3.1982, stated that when the enquiry was posted on 20.3.1982 he explained to the enquiry officer the reasons why he could not examine his witnesses and accordingly, the enquiry was adjourned to 25.3.1982. In the letter it is also stated that there was no reply from the witnesses and both of the witnesses went to Ramgargh in connection with their official work and they could not leave the work place abruptly to come to Chennai for giving evidence in the enquiry and even if they come leaving the work in the middle, the management would take action against them and therefore, the second respondent prayed that the enquiry may be adjourned till both the witnesses

come to Chennai. Though in the last portion of the letter the second respondent has stated that the enquiry may be adjourned till two employees/wi tnesses return to Chennai, the enquiry officer, instead of straight away rejecting the request for the adjournment of the case till the witnesses come, could have ascertained from the management and the second respondent the probable date of return of the two employees from Ramgargh to Chennai and posted the enquiry immediately thereafter. Though the adjournment sought was for an indefinite period, the enquiry officer need not have adjourned the matter indefinitely, and after ascertaining the convenient date, he should have adjourned the matter to a definite further date for the continuation of the enquiry. The second respondent has clearly stated that he informed the employees who were working at Ramgargh regarding the date of enquiry. We must remember that in 1982 the level of communication was not high as it exists today and the second respondent informed the enquiry officer that he intimated the date of enquiry to those employees/witnesses, but he did not receive any reply from them. The Labour Court also found that the enquiry officer has adopted a double standard while considering the request of the management to examine one Vijayaraghavan. When the enquiry was posted on 11.1.1982 it was represented by the management that its main witness, Vijayaraghavan was at Ramgargh and it may take sometime to bring him to Chennai and on that basis, the enquiry was adjourned to 5.3.1982 from 11.1.1982 and on 5.3.1982 Vijayaraghavan was examined and the matter was adjourned to 9.3.1982 and on 9.3.1982 the management wanted to recall Vijayaraghavan for re-examination and the enquiry was adjourned to 15.3.1982 for the examination of Vijayaraghavan again. The enquiry was then adjourned to 20.3.1982 for examination of two witnesses on the side of workman as requested by the second respondent. On 20.3.1982 it was represented by the second respondent that the two employees/witnesses were working at Ramgargh and at his request, the enquiry was adjourned to 25.3.1982. On 25.3.1982 the second respondent filed a petition requesting for an adjournment, but the enquiry officer refused to accept the request of the second respondent and proceeded with the further enquiry. The stand adopted by the enquiry officer in readily granting adjournment to the management to bring its witness from Ramgargh for a period of more than two months coupled with his refusal to grant adjournment beyond a period of five days when a similar request was made by the second respondent was taken note of by the Labour Court and it found that the enquiry officer adopted a double standard which shows that the enquiry officer has not conducted the enquiry properly. We are of the view that the enquiry officer should have adjourned the matter after ascertaining from the management as well as from the second respondent as to when the two witnesses sought to be examined by the workman are likely to return, instead of straight away rejecting the request of the second respondent. It is also relevant to notice here that the case of the second respondent was that he was sent to Ramgargh along with other three employees and all the four employees met and took a decision to send the second respondents in both the appeals to Chennai to inform the management through the Union of their grievances at Ramgargh and Vijayaraghavan also helped them by providing money which is evident from Ex.W-2 and Ex.W-3 and only with the permission of Vijayaraghavan they left Ramgargh and reached Chennai. Hence, it is necessary for the second respondents to establish their case by examining two other employees who were at Ramgarh and without the examination of those employees, it may not be

possible for the second respondents to substantiate their defence made in their explanation. Hence, the refusal by the enquiry officer to adjourn the matter to enable the second respondent to examine their witnesses is prejudicial to the interests of the second respondents to put forth their defence effectively and to establish their case. Though adjournment may not be claimed as a matter of right, yet, the question that arises in this case is whether the refusal to grant adjournment is just and proper. We find that the refusal by the enquiry officer to adjourn the enquiry is not fair and proper and we hold that the Labour Court was perfectly right in holding that there was violation of the principles of natural justice in conducting the enquiry, and the enquiry was not conducted in a fair and proper manner.

9. Moreover, Vijayaraghavan, when he was examined, has stated that the second respondent left for Madras without any reason. But, at the time of cross-examination, he has admitted that the second respondent gave reasons for his return from Ramgargh to Chennai. When the second respondent was examined he has categorically stated that the charge made by Vijayaraghavan that the second respondent did not work at Ramgargh was refuted by the two witnesses who were present at the work-site and hence, the charge levelled against him is false. He also stated that he worked from 23.11.1981 to 26.11.1981.

10. Learned counsel for the appellant relied upon the decision of the Supreme Court in STATE BANK OF PATIALA & ORS. v. S.K.SHARMA (1996 II LLJ 296) and submitted that in the case of procedural provision which is not of a mandatory character, the complaint of violation of procedural provision has to be examined from the standpoint of substantial compliance and the court would be justified in interfering with the order where the violation has occasioned prejudice to the delinquent employee. We hold that the decision of the Supreme Court in S.K.Sharma's case (1996 II LLJ 296) far from supporting the case of the appellant supports the case of the second respondent. The refusal of the enquiry officer to permit the second respondent to examine his witnesses to establish his case cannot be regarded as a procedural provision, but a substantive one and the refusal has caused a great prejudice to the second respondent in establishing his case. Since there is detriment to the interest of the second respondent by not granting sufficient time to examine his witnesses, we hold that the view of the Labour Court that the enquiry conducted was vitiated by the violation of the principles of natural justice is quite justified and no infirmity can be attached to that finding.

11. Learned counsel for the appellant also referred to the charge framed and submitted that the first part of the charge was proved as the second respondent refused to work. In so far as first part of the charge is concerned, the charge is that he refused to do work from 23.11.1981 without any reasonable cause, and we have held that the enquiry was not conducted properly and it is impermissible to rely upon the statement of Vijayaraghavan alone to come to the conclusion that the first part of the charge has been proved. Moreover, the first part of the charge refers only to 'from 23.11.1981' and the charge is not specific as to the nature of the work given to the second respondent which he refused to do and on which date he refused

to do the work. Since the first part of the charge is vague, the finding of the enquiry officer that the second respondent did not work from 23.11.1 981 to 28.11.1981 is not sustainable on the facts of the case. Further, the plea of the second respondent was that he was an Electrician and his work would commence only after the assembly work was over and since the assembly work was not over, he could not have been charged on the ground that he did not work from 23.11.1981. However, it is not necessary for us to go into the matter further as we have found that the enquiry held is vitiated.

12. As far as the second part of the charge is concerned, though the second respondent left Ramgargh on 28.11.1981, his case is that he left that place with the permission of Vijayaraghavan. Since the entire enquiry is held to be vitiated as no sufficient opportunity was given to the second respondent to examine his witnesses, we hold that it became impossible for the second respondent to prove his case. The enquiry officer has recorded his finding on the basis of incomplete enquiry and hence, no reliance can be placed on the report of the enquiry officer.

13. The next submission of the learned counsel for the appellant is that the second respondent has made a statement at the time of conclusion of the enquiry that he was satisfied with the enquiry proceedings. Though the statement of the second respondent was recorded by the enquiry officer, the statement cannot be taken advantage of by the management as the case of the second respondent throughout was that he was denied reasonable opportunity to defend his case and the enquiry held was not proper. Therefore the statement made by the second respondent before the enquiry officer at the conclusion of the enquiry cannot be put against the second respondent when, on the facts of the case, it is clear that the enquiry conducted was not fair on account of not giving sufficient opportunity to the second respondent to examine his witnesses to establish his case. We therefore hold that the Labour Court was correct in holding that the enquiry conducted was not just and proper and the learned Judge was also correct in dismissing both the writ petitions. Accordingly, both the writ appeals are liable to be dismissed.

14. At the time of admission of the writ appeals, the appellant sought for an interim stay of the operation of the award of the Labour Court and this Court also granted interim stay of the operation of the award subject to the condition that in each appeal the appellant company should deposit a sum of Rs.4 lakhs to the credit of Labour Court with the liberty granted to the second respondent in the each appeal to withdraw accrued interest every month. The Court also directed the appellant company to pay a sum of Rs.4,200/- every month to the second respondent in each writ appeal. Since we are dismissing the writ appeals, the second respondent in each of the appeals is entitled to be reinstated into service with full backwages. The second respondent in each case is entitled to withdraw the sum of Rs.4 lakhs deposited in the Labour Court and it is open to the appellant company to adjust the amounts received by the second respondent in each writ appeal against the amounts payable by the appellant company towards backwages due to the second respondent in each of the writ appeals.

15. Accordingly, both the writ appeals stand dismissed.

However, in the circumstances, there will be no order as to costs.

Index: Yes
Website: Yes

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To

The Presiding Officer,
II Addl. Labour Court, Madras.